

## CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

### Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

#### §24.103. Certificates Not Required.

(a) **Extension of Service.**

- (1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:
  - (A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or
  - (B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.
- (2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.

- (b) **Construction of Facilities.** A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

- (c) **Municipality Pursuant to the TWC, §13.255.** A municipality which has given notice under the TWC, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:

- (1) a copy of the notice required pursuant to the TWC, §13.255; and
- (2) a map showing the area affected under the TWC, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.

(d) **Utility or Water Supply Corporation With Less Than 15 Potential Connections.**

- (1) A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:
  - (A) has less than 15 potential service connections;
  - (B) is not owned by or affiliated with a retail public utility or any other provider of potable water service;
  - (C) is not within the certificated area of another retail public utility; and
  - (D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.
- (2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.
- (3) The commission may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.

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- (4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.80 - 24.90 of this title.
  - (5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.
  - (6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:
    - (A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and
    - (B) may change its rates without following the requirements in §24.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the commission will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the commission will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission..
    - (C) The exempt utility or water supply corporation, office of public utility counsel, commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the request or protest.
    - (D) A rate change application filed by an exempt utility that follows the rate change procedures in §24.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.
  - (7) Unless authorized in writing by the commission, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.
  - (8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the commission shall be subject to any and all enforcement remedies provided by this chapter and the TWC, Chapter 13.
- (e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under TWC, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the

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municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC, §13.255(b).